

1692

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. ORTIZ, MILLMAN, GIBSON, ROBINSON -- Multi-Sponsored by -- M. of A. BOYLAND, CAHILL, McENENY, TITONE -- read once and referred to the Committee on Children and Families

AN ACT to amend the mental hygiene law and the executive law, in relation to providing legal assistance to youth ordered by the court into the custody of the office of children and family services and placed or committed to a state operated juvenile detention center

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision (a) of section 47.01 of the mental hygiene law,  
2 as amended by chapter 7 of the laws of 2007, is amended to read as  
3 follows:  
4 (a) There shall be a mental hygiene legal service of the state in each  
5 judicial department. The service shall provide legal assistance to  
6 patients or residents of a facility as defined in section 1.03 of this  
7 chapter, or any other place or facility which is required to have an  
8 operating certificate pursuant to article sixteen or thirty-one of this  
9 chapter, and to persons alleged to be in need of care and treatment in  
10 such facilities or places, and to persons entitled to such legal assist-  
11 ance as provided by article ten of this chapter. THE SERVICES SHALL  
12 ALSO PROVIDE LEGAL ASSISTANCE TO YOUTH ORDERED BY THE COURT INTO THE  
13 CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES AND PLACED OR  
14 COMMITTED TO A STATE OPERATED JUVENILE DETENTION CENTER. The head of  
15 such service in each judicial department and such assistants and such  
16 staff as may be necessary shall be appointed and may be removed by the  
17 presiding justice of the appellate division of the judicial department.  
18 Appointments and transfers to the service shall comply with the  
19 provisions of the civil service law. Standards for qualifications of the  
20 personnel in the service shall be established by the presiding justice  
21 of the appellate division of the judicial department. The presiding  
22 justice of the appellate division of the judicial department shall

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 promulgate such rules or regulations as may be necessary to effectuate  
2 the purposes of this article.

3 S 2. Section 47.03 of the mental hygiene law, as added by chapter 789  
4 of the laws of 1985, subdivision (c) as amended by chapter 408 of the  
5 laws of 1999, subdivisions (d) and (e) as amended and subdivision (f) as  
6 added by chapter 7 of the laws of 2007, is amended to read as follows:

7 S 47.03 Functions, powers and duties of the service.

8 The mental hygiene legal service in each judicial department of the  
9 state shall perform the following duties:

10 (a) To study and review the admission and retention of all patients or  
11 residents which shall include a review of the willingness of the patient  
12 or resident to remain in his or her status and the determination of the  
13 facility director as to suitability of such status, as provided for by  
14 this chapter;

15 (b) To inform patients or residents and, in proper cases, others  
16 interested in such persons' welfare of procedures for admission and  
17 retention and of the patients' or residents' right to have judicial  
18 hearing and review, to be represented by legal counsel, and to seek  
19 independent medical opinion;

20 (c) To provide legal services and assistance to patients or residents  
21 and their families related to the admission, retention, and care and  
22 treatment of such persons, to provide legal services and assistance to  
23 subjects of a petition or patients subject to section 9.60 of this chap-  
24 ter, and to inform patients or residents, their families and, in proper  
25 cases, others interested in the patients' or residents' welfare of the  
26 availability of other legal resources which may be of assistance in  
27 matters not directly related to the admission, retention, and care and  
28 treatment of such patients or residents;

29 (d) TO PROVIDE LEGAL SERVICES AND ASSISTANCE TO YOUTH RESIDING IN  
30 JUVENILE DETENTION CENTERS AND THEIR FAMILIES RELATED TO THE RETENTION,  
31 CARE AND TREATMENT OF SUCH PERSONS, AND TO INFORM YOUTH AND THEIR FAMI-  
32 LIES AND IN PROPER CASES, OTHERS INTERESTED IN THE YOUTHS' WELFARE, OF  
33 THE AVAILABILITY OF OTHER LEGAL RESOURCES WHICH MAY BE OF ASSISTANCE IN  
34 MATTERS NOT DIRECTLY RELATED TO THE RETENTION, CARE AND TREATMENT OF  
35 SUCH YOUTH;

36 (E) To be granted access at any and all times to any facility or place  
37 or part thereof described in subdivision (a) of section 47.01 of this  
38 article, and to all books, records and data pertaining to any such  
39 facility or place deemed necessary for carrying out its functions,  
40 powers and duties. The mental hygiene legal service may require from the  
41 officers or employees of such facility or place any information deemed  
42 necessary for the purpose of carrying out the service's functions,  
43 powers and duties. Information, books, records or data which are confi-  
44 dential and any limitations on the release thereof imposed by law upon  
45 the party furnishing the information, books, records or data shall apply  
46 to the service. Provided, however, whenever federal regulations  
47 restrict, or as a condition of federal aid require that a facility  
48 restrict the release of information contained in the clinical record of  
49 a patient or client, or restrict disclosure of the identity of a patient  
50 or access to that patient, to a greater extent than is allowed under  
51 this section, the provisions of such federal law or federal regulation  
52 shall be controlling;

53 [(e)] (F) To initiate and take any legal action deemed necessary to  
54 safeguard the right of any patient [or], resident OR YOUTH to protection  
55 from abuse or mistreatment, which may include investigation into any

1 such allegations of abuse or mistreatment of any such patient or resi-  
2 dent; and

3 [(f)] (G) To provide legal services and assistance in accordance with  
4 article ten of this chapter.

5 S 3. The executive law is amended by adding a new section 508-a to  
6 read as follows:

7 S 508-A. LEGAL SERVICES AND ASSISTANCE TO YOUTH. IN ADDITION TO ANY  
8 LAW GUARDIAN, COURT APPOINTED COUNSEL OR PRIVATE COUNSEL A YOUTH MAY  
9 HAVE, THE MENTAL HYGIENE LEGAL SERVICE IN EACH JUDICIAL DEPARTMENT OF  
10 THE STATE, ESTABLISHED PURSUANT TO ARTICLE FORTY-SEVEN OF THE MENTAL  
11 HYGIENE LAW, SHALL PROVIDE LEGAL SERVICES AND ASSISTANCE TO YOUTH AND  
12 THEIR FAMILY RELATING TO THE RETENTION, CARE AND TREATMENT OF SUCH YOUTH  
13 WHEN SUCH YOUTH IS ORDERED BY THE COURT INTO THE CUSTODY OF THE OFFICE  
14 OF CHILDREN AND FAMILY SERVICES AND PLACED OR COMMITTED TO A STATE OPER-  
15 ATED JUVENILE DETENTION CENTER.

16 S 4. This act shall take effect on the ninetieth day after it shall  
17 have become a law; provided, however, that the amendments to subdivision  
18 (c) of section 47.03 of the mental hygiene law made by section two of  
19 this act shall not affect the expiration and reversion of such subdivi-  
20 sion. Further provided, effective immediately, the addition, amendment  
21 and/or repeal of any rule or regulation necessary for the implementation  
22 of this act on its effective date are authorized and directed to be made  
23 and completed on or before such effective date.